

Mr. Verne Walton

February 14, 1984

Margaret S. Shedd

San Luis Obispo Correspondence

This is in response to your memo to Larry Augusta of January 31, 1984, in which you request that we review and approve your proposed response to correspondence received from the San Luis Obispo County Assessor. Your handwritten note on the memo indicates that you have some concern with your proposed answer (2).

Question (2) asks whether the provisions of Section 2(d) of Article XIII A of the California Constitution and Section 68 of the Revenue and Taxation Code apply to voluntary grants of land by land developers to cities, counties or other governmental entities for use as green belts, holding ponds, or other public uses, when such grants are required by the governmental entity as a condition for approval of the proposed project. Your proposed answer is that the aforementioned constitutional and statutory provisions do not apply. We disagree.

Section 2(d) of Article XIII A provides that "change in ownership" does "not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceeding, by acquisition by a public entity...." (Emphasis added.) Neither Section 68 of the Revenue and Taxation Code nor Board Rule No. 462.5, which implemented the constitutional provision, place any limitation on the method of acquisition by a public entity. Thus, regardless of whether the property acquired by a public entity is by gift, purchase, eminent domain, voluntary dedication, or any other method, comparable replacement property qualifies for relief, so long as all other conditions are met.

MSS:jlh

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Legal Section